

Ronald H. Lewis, M.D., Chair
Panel A

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

Arnold Erwin Feldman, M.D.)

Case No. 800-2016-028123

**Physician's and Surgeon's)
Certificate No. G 85449)**

Respondent)

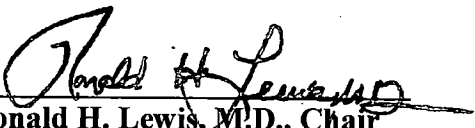
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 26, 2018.

IT IS SO ORDERED December 28, 2017.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARNOLD ERWIN FELDMAN, M.D.,

Physician's and Surgeon's Certificate
No. G85449

Respondent.

Case No. 800-2016-028123

OAH No. 2017030776

PROPOSED DECISION

Administrative Law Judge David Benjamin, State of California, Office of Administrative Hearings, heard this matter on November 2, 2017, in Oakland, California.

Deputy Attorney General Carolyne Evans represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Albert J. Garcia, Attorney at Law, represented respondent Arnold Erwin Feldman, M.D., who was not present.

The record closed and the matter was submitted on November 2, 2017.

FACTUAL FINDINGS

1. On September 24, 2009, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G85449 to respondent Arnold Erwin Feldman, M.D. The license will expire on December 31, 2018; it is presently suspended pursuant to Business and Professions Code section 2310, subdivision (a).

2. On February 21, 2017, complainant Kimberly Kirchmeyer, acting in her official capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California certificate is subject to discipline because of actions taken by the Louisiana State Board of Medical Examiners (Louisiana Board) against his Louisiana Medical License.

Action by the Louisiana Board

3. At all times relevant to this proceeding, respondent was licensed as a physician by the Louisiana Board (Certificate No. 10296R).

4. On August 15, 2016, the Louisiana Board suspended respondent's medical license for two years, effective 30 days later,¹ and ordered him to pay a fine of \$5,000; to take one or more classes in the areas of medical ethics, professionalism and recordkeeping; and to undergo a mental and physical examination to determine whether he is competent to practice. The Louisiana Board's order provides that, upon conclusion of the period of suspension and compliance with the terms of the suspension, respondent's Louisiana medical license may be reinstated on probation for three years, subject to numerous terms and conditions.

5. The Louisiana Board's action arose out of respondent's treatment of RR, a surgical patient who died under respondent's care.² Following a hearing, the Louisiana Board made findings that are summarized as follows:

Respondent falsified the medical record of RR and submitted the falsified documents to the Louisiana Board. The Board found that the extent of respondent's fabrications in the patient's medical record was "staggering."

Respondent failed to assure that licensed and registered nurses were available to assist and monitor patients undergoing surgical procedures in his facility. Respondent delegated nursing care, patient assessment and monitoring, and the administration of intravenous medication to unlicensed personnel.

Respondent performed a surgical procedure on RR, even though RR was a poor candidate for the procedure, without a registered nurse or another appropriately trained, qualified, and licensed individual in the surgical facility to adequately monitor the patient, and respondent failed to adequately monitor the patient, exercised poor management or care of the patient after complications arose, and his resuscitation attempts were contributing factors in RR's death. Among other findings, the Louisiana Board found that RR was monitored by an unlicensed scrub technician.

Respondent allowed an orthopedic surgeon who was on probation to the Louisiana Board, and who was not authorized by the Board to perform surgeries at respondent's facility, to perform 27 surgeries at respondent's facility.

¹ The Louisiana Board later extended the effective date of respondent's two-year suspension to October 14, 2016, due to the difficulty of arranging for patient referrals following flooding in Baton Rouge.

² The Louisiana Board's decision refers to the patient by his initials.

Respondent facilitated the unauthorized practice of medicine by his unlicensed staff in numerous ways, including the following: an unlicensed scrub technician refilled pain pumps; pain pumps were filled by an unlicensed person when respondent was not on the premises; an unlicensed person changed the dosages of pain pumps without consulting respondent; and unlicensed personnel administered controlled substances at respondent's facility.

Respondent provided pre-signed prescriptions to his staff and allowed staff to use a device called a "ghostwriter" to affix his signature to prescriptions. Respondent provided pre-printed, pre-signed prescriptions to patients without seeing them, and allowed unlicensed personnel to sign prescriptions by using the ghostwriter device that simulated his signature. One of respondent's unlicensed staff members used these procedures to write prescriptions for controlled substances. Respondent allowed unlicensed staff members access to his Pyxis machine and its controlled substances.

Respondent's evidence

6. Respondent did not testify. There is no evidence of rehabilitation.

Other matters

7. Respondent has been disciplined by the Board before. On May 21, 2001, respondent signed a Stipulation for Public Reprimand with the Board, which the Board approved effective September 24, 2001. In that stipulation, respondent admitted that he was subject to discipline in California because the Mississippi State Board of Medical Licensure had reprimanded him and placed his Mississippi license on probation for one year. The Mississippi Board found that respondent had violated numerous laws and regulations pertaining to the prescribing, dispensing, and administration of controlled substances.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.
2. Business and Professions Code section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Board. It provides, in relevant part, as follows:

For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board.

The disciplinary action of the Louisiana Board was based on acts substantially related to the practice of medicine. Cause exists under section 141 to take disciplinary action against respondent's certificate, by reason of the matters set forth in Findings 4 and 5.

3. Business and Professions Code section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

The Louisiana Board suspended respondent's medical license in that state on grounds that would have constituted grounds for disciplinary action in California. The conduct found by the Louisiana Board, as summarized in Finding 5, would have been grounds for disciplinary action in California under Business and Professions Code section 2234 (unprofessional conduct); section 2234, subdivision (b) (gross negligence), subdivision (c) (repeated negligent acts), or subdivision (d) (incompetence); section 2234, subdivision (e) (dishonesty related to patient care); section 2238 (violation of drug statutes); section 2242 (prescribing without an appropriate examination); section 2261 (making false statements); section 2262 (alteration of medical records); section 2264 (aiding and abetting unlicensed practice); and/or section 2266 (failure to maintain adequate and accurate records), as those sections interact with section 2234 (authority to take disciplinary action for unprofessional conduct). Cause exists under section 2305 to take disciplinary action against respondent's certificate.

4. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board has adopted guidelines to assist in the evaluation of that issue. (Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition.) The guidelines provide that, in out-of-state discipline cases, the minimum level of discipline should be the same as that for a similar violation in California, and the maximum disciplinary action is revocation. The minimum recommended discipline for any of the violations cited above is not less than a stayed revocation and five years' probation; some of the violations carry a minimum discipline of a stayed revocation and seven years' probation, or seven years' probation and a suspension.

5. There are no considerations that militate toward the minimum level of discipline. Respondent has been disciplined twice before, by the Mississippi Board and the California Board, for misconduct related to the prescribing, dispensing, and administration of controlled substances. Those disciplinary measures were not successful in bringing respondent's practice into conformance with professional standards. To the contrary: respondent has now been disciplined a third time for misconduct relating to controlled substances, aggravated by poor patient care, indifference to the safety of his patients, and

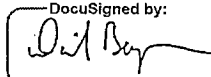
unconscionable dishonesty in an attempt to mislead the Louisiana Board. Respondent presents a threat to patient safety. It would be contrary to the public interest to allow him to retain his California certificate, even on a probationary basis.

ORDER

Physician's and Surgeon's Certificate No. G85449 issued to respondent Arnold Erwin Feldman, M.D., is revoked.

DATED: November 30, 2017

DocuSigned by:



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DAVID BENJAMIN

Administrative Law Judge

Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General.
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 21 20 17
BY D. Firdaus ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-028123

Arnold Erwin Feldman, M.D.
17740 West Lakeway Drive
Baton Rouge, LA 70810

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. G85449,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about September 24, 1999, the Medical Board issued Physician's and Surgeon's Certificate Number G85449 to Arnold Erwin Feldman, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2018, unless renewed. However, on January 17, 2017, pursuant to Section 2310(a) of the Business and Professions Code, a full Out of State Suspension Order-No Practice was issued.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides, in part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2305 of the Code states:

A The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.®

6. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

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1 **PRIOR DISCIPLINE**

2 7. On or about January 8, 2001, the Board filed an Accusation against Respondent
3 alleging that he was subjected to discipline, a restriction or a limitation imposed by another state.
4 On September 24, 2001, the Board issued a Decision and Order which read: "Public Reprimand."
5 A true and correct copy of the September 24, 2001 Order is attached as Exhibit A.

6 **CAUSE FOR DISCIPLINE**

7 **(Discipline, Restriction, or Limitation Imposed by Another State)**

8 8. On or about August 15, 2016, the Louisiana Medical Board issued a Decision and
9 Order ("Louisiana Order"). The Louisiana Order found that Respondent engaged in
10 unprofessional conduct and provided false testimony to the Louisiana Board. The false testimony
11 pertained to Respondent's submission of medical records that had been falsified as to the nursing
12 care performed by a registered nurse on a patient who died under Respondent's care. As a result
13 of Respondent's unprofessional conduct and dishonesty, the Louisiana Board suspended
14 Respondent from the practice of medicine for a period of two (2) years and ordered that
15 Respondent take one or more courses in the area of medical ethics, professionalism, and medical
16 recording keeping. The Louisiana Order also required that Respondent undergo a mental/physical
17 evaluation to determine his competency. On October 14, 2016, the Louisiana Board issued a
18 subsequent order that extended the effective date of the August 15, 2016 Decision and Order due
19 to flooding in and around Baton Rouge. The two-year suspension commenced on October 14,
20 2016.

21 9. Respondent's conduct as set forth in paragraph 8 above, and as described within the
22 Louisiana Order, attached as Exhibit B, constitute unprofessional conduct and cause for discipline
23 pursuant to sections 2305 and/or 141 of the Code.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Medical Board of California issue a decision:

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1 1. Revoking or suspending Physician's and Surgeon's Certificate Number G85449,
2 issued to Arnold Erwin Feldman, M.D.;

3 2. Revoking, suspending or denying approval of Arnold Erwin Feldman, M.D.'s
4 authority to supervise physician assistants, pursuant to section 3527 of the Code;

5 3. Ordering Arnold Erwin Feldman, M.D., if placed on probation, to pay the Board the
6 costs of probation monitoring; and

7 4. Taking such other and further action as deemed necessary and proper.

8
9 DATED: February 21, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)
)
)

ARNOLD ERWIN FELDMAN, M.D.)

File No. 16-2000-113228

Physician's and Surgeon's)

Certificate No. G 85449)
)
)

Respondent.)
)

DECISION

The attached Stipulation for Public Reprimand is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 24, 2001.

IT IS SO ORDERED August 23, 2001.

MEDICAL BOARD OF CALIFORNIA

By: 

Hazem H. Chehabi, M.D., Chair
Panel A
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 1300 I Street, Suite 125
P.O. Box 944255
4 Sacramento, California 94244-2550
Telephone: (916) 324-5336

5 Attorneys for Complainant
6
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:)

No. 16-2000-113228

12 **ARNOLD ERWIN FELDMAN, M.D.**)
13 59 Dunbar Road)
Natchez, MS 39120)

STIPULATION FOR
PUBLIC REPRIMAND

14 Physician and Surgeon's)
15 Certificate No. G 85449)
16

17 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to
18 the above-entitled proceedings that the following matters are true:

19 1. An Accusation in case number 16-2000-113228 was filed with the
20 Division of Medical Quality, of the Medical Board of California Department of Consumer
21 Affairs (the "Division") on January 8, 2001 currently pending against Arnold Erwin Feldman,
22 M.D. (the "respondent").

23 2. At all times relevant herein, respondent has been licensed by the Medical
24 Board of California under Physician and Surgeon's Certificate No. G 85449, issued by the Board
25 to respondent on or about September 24, 1999. Said certificate is current with an expiration date
26 of December 31, 2001.

27 3. The Accusation, together with all statutorily required documents, was
28 duly served on the respondent, and respondent filed his Notice of Defense contesting the

1 Accusation. A copy of Accusation No. 16-2000-113228 is attached as Exhibit "A" and hereby
2 incorporated by reference as if fully set forth.

3 4. The Complainant, Ronald Joseph, is the Executive Director of the Medical
4 Board of California and brought this action solely in his official capacity. The Complainant is
5 represented by the Attorney General of California, Bill Lockyer, by and through Supervising
6 Deputy Attorney General, Gail M. Heppell.

7 5. Respondent is representing himself in this matter and has carefully read
8 this stipulation.

9 6. Respondent understands the nature of the charges alleged in the
10 Accusation and that, if proven at hearing, the charges and allegations would constitute cause for
11 imposing discipline upon his certificate. Respondent is fully aware of his right to a hearing on
12 the charges contained in the Accusation, his right to confront and cross-examine witnesses
13 against him, his right to the use of subpoenas to compel the attendance of witnesses and the
14 production of documents in both defense and mitigation of the charges, his right to
15 reconsideration, appeal and any and all other rights accorded by the California Administrative
16 Procedure Act and other applicable laws. Respondent knowingly, voluntarily and irrevocably
17 waives and gives up each of these rights.

18 7. In order to avoid the expense and uncertainty of a hearing, respondent
19 admits the truth of each and every allegation of paragraph 5 of the Accusation. Respondent
20 agrees that he has thereby subjected his certificate to disciplinary action pursuant to Business and
21 Professions Code section 2305 and 141.

22 8. All admissions and recitals contained in this stipulation are made solely
23 for the purpose of settlement in this proceeding and for any other proceedings in which the
24 Division of Medical Quality, Medical Board of California or other professional licensing agency
25 is involved, and shall not be admissible in any other criminal or civil proceedings.

26 9. Respondent acknowledges that he shall not be permitted to withdraw from
27 this stipulation unless it is rejected by the Medical Board of California, Division of Medical
28 Quality.

1 10. Based on the foregoing admissions and stipulated matters, the parties
2 agree that the Division shall, without further notice or formal proceeding, issue and enter the
3 following order:

4 **DISCIPLINARY ORDER**

5 **IT IS HEREBY ORDERED** that:

- 6 1. Respondent shall be, and hereby is, publicly reprimanded.
- 7 2. Respondent shall reimburse the Division the amount of \$300.00 as
8 recovery of reasonable costs of investigation and prosecution of this case within ninety (90) days
9 of the Board's Order.
- 10 3. Any failure by respondent to comply with any term or condition of this
11 order in any respect shall constitute unprofessional conduct and permit the Board at its sole,
12 nonreviewable election to set aside and vacate its order of adoption herein.
- 13 4. The terms and conditions set forth herein shall be null and void and not
14 binding on the parties unless and until approved on behalf of the Board.

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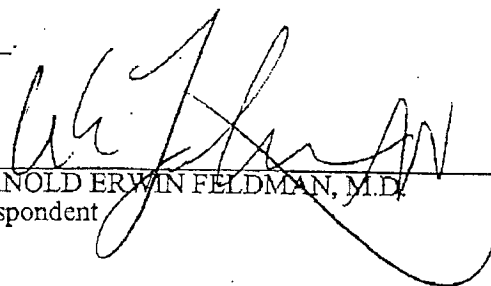
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ACCEPTANCE

I have read the above Stipulation for Public Reprimand. I understand the terms and ramifications of this Stipulation, and agree to be bound thereby. I enter this stipulation freely, knowingly, intelligently and voluntarily.

DATED: 5/21/01


ARNOLD ERWIN FELDMAN, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulation for Public Reprimand is hereby respectfully submitted for the consideration of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: June 18, 2001

BILL LOCKYER, Attorney General
of the State of California

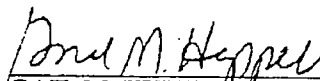

GAIL M. HEPPELL
Supervising Deputy Attorney General
Attorneys for Complainant

EXHIBIT A

REDACTED

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 8, 2001
BY Valerie Moore ANALYST

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 16-2000-113228

ARNOLD ERWIN FELDMAN, M.D.,
59 Dunbar Road
Natchez, MS 39120

ACCUSATION

Physician and Surgeon's
Certificate No. G 85449

Respondent.

The Complainant alleges:

PARTIES

1. Complainant, Ronald Joseph, is the Executive
Director of the Medical Board of California (hereinafter the
"Board") and brings this accusation solely in his official
capacity.

2. On or about September 24, 1999, Physician and
Surgeon's Certificate No. G 85449 was issued by the Board to
Arnold Erwin Feldman, M.D. (hereinafter "respondent"), and at all

1 times relevant to the charges brought herein, this license has
2 been in full force and effect. Said certificate is renewed and
3 current with an expiration date of December 31, 2002.

4 JURISDICTION

5 3. This accusation is brought before the Division of
6 Medical Quality of the Medical Board of California, Department of
7 Consumer Affairs (hereinafter the "Division"), under the
8 authority of the following sections of the California Business
9 and Professions Code (hereinafter "Code") and/or other relevant
10 statutory enactment:

11 A. Section 2227 of the Code provides in part that the
12 Board may revoke, suspend for a period of not to exceed one
13 year, or place on probation, the license of any licensee who
14 has been found guilty under the Medical Practice Act, and
15 may recover the costs of probation monitoring if probation
16 is imposed.

17 B. Section 125.3 of the Code provides, in part, that
18 the Board may request the administrative law judge to direct
19 any licentiate found to have committed a violation or
20 violations of the licensing act, to pay the Board a sum not
21 to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 C. Section 2305 of the Code provides, in part, that
24 the revocation, suspension, or other discipline, restriction
25 imposed by another state upon a license or certificate to
26 practice medicine issued by that state, that would have been
27 grounds for discipline in California of a licensee under

1 this chapter, shall constitute grounds for disciplinary
2 action for unprofessional conduct against the licensee in
3 this state.

4 D. Section 4081 of the Code provides, in pertinent
5 part, that all records of sale, acquisition, or disposition
6 of dangerous drugs shall be open to inspection by authorized
7 officers of the law and preserved for at least three (3)
8 years. A current inventory shall be kept by every physician
9 who is holding a currently valid and unrevoked license who
10 maintains a stock of dangerous drugs.

11 E. Section 2238 of the Code provides in part that a
12 violation of any statute or regulation of this state
13 regulating dangerous drugs or controlled substances
14 constitutes unprofessional conduct.

15 F. Section 11190 of the Health and Safety Code
16 provides in part that every practitioner who issues a
17 prescription or dispenses or administers a controlled
18 substance classified in Schedule II shall make a record that
19 shows the name and address of the patient, the date, and the
20 character, including strength and quantity of the controlled
21 substance prescribed.

22 G. Section 141 of the Code provides:

23 "(a) For any licensee holding a license issued by a
24 board under the jurisdiction of the department, a
25 disciplinary action taken by another state, by any agency of
26 the federal government, or by another country for any act
27 substantially related to the practice regulated by the

1 California license, may be a ground for disciplinary action
2 by the respective state licensing board. A certified copy
3 of the record of the disciplinary action taken against the
4 licensee by another state, an agency of the federal
5 government, or another country shall be conclusive evidence
6 of the events related therein."

7 H. Section 14124.12(a) of the Welfare & Institutions
8 Code provides in pertinent part that upon written notice of
9 the Medical Board of California that a physician and surgeon's
10 medical license has been placed on probation as a result of
11 a disciplinary action, no Medi-Cal claim for the type of
12 surgical service or invasive procedure giving rise to the
13 probationary order and performed on or after the effective
14 date of said probationary order or during the period of
15 probation shall be reimbursed, except upon a prior
16 determination that compelling circumstances warrant the
17 continuance of reimbursement during the probationary period
18 for procedures other than those giving rise to the
19 probationary order.

20 4. Respondent is subject to discipline within the
21 meaning of section 141 and guilty of unprofessional conduct
22 within the meaning of sections 2305, 4081, and 2238 in
23 conjunction with Health and Safety Code section 11190 as more
24 particularly set forth hereinbelow.

25 **FIRST CAUSE FOR DISCIPLINE**

26 (Discipline, Restriction, or Limitation Imposed By Another State)

27 5. Respondent Arnold Erwin Feldman, M.D., is subject

1 to disciplinary action under section 141 of the Business and
2 Professions Code in that on or about May 18, 2000, the State of
3 Mississippi, State Board of Medical Licensure issued a reprimand
4 to respondent and placed him on probation for one (1) year with
5 terms and conditions. Respondent was required to successfully
6 pass a jurisprudence examination covering the rules and
7 regulations of the Board pertaining to the dispensing,
8 administering and prescribing of medications; successfully
9 complete Case Western Reserve's University intensive courses in
10 controlled substance management and medical record keeping; the
11 first week of the month provide to Board staff copies of
12 administration and dispensing records; and obtain 50 hours of
13 Continuing Medical Education. The Mississippi Board found that
14 respondent had violated numerous laws and regulations pertaining
15 to the prescribing, dispensing, and administration of controlled
16 substances; including failure to have an initial controlled
17 substance inventory, failure to maintain controlled substance
18 purchase invoices; failure to note patient addresses in
19 controlled dispensing logs for Schedule II drugs; and failure to
20 enter the actual quantity of controlled substances dispensed in
21 the dispensing logs for Schedule II drugs.

22 Attached as Exhibit A is a true and correct copy of the
23 certified Reprimand, Summon, Affidavit, and Letter issued by the
24 Mississippi State Board of Medical Licensure.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct, Violation of Drug Statutes)

27 6. Complainant realleges paragraph 5, above, and

1 incorporates it herein by reference as if fully set forth at this
2 point.

3 7. Respondent's conduct as set forth in paragraph 5,
4 above, in failing to maintain records of acquisition and
5 disposition of controlled substances and in failing to maintain
6 complete and accurate records pertaining to the dispensing or
7 administration of Schedule II controlled substances constitutes
8 unprofessional conduct within the meaning of Code sections 2305,
9 2239, 4081, and 2238 in conjunction with Health and Safety Code
10 section 11190.

PRAYER

12 WHEREFORE, the complainant requests that a hearing be
13 held on the matters herein alleged, and that following the
14 hearing, the Division issue a decision:

15 1. Revoking or suspending Physician and Surgeon's
16 Certificate Number G 85449 heretofore issued to respondent Arnold
17 Erwin Feldman, M.D.;

18 2. Revoking, suspending or denying approval of the
19 respondent's authority, to supervise physician assistants,
20 pursuant to Code section 3527;

21 3. Ordering respondent to pay the Division the actual
22 and reasonable costs of the investigation and enforcement of this
23 case and to pay the costs of probation monitoring upon order of
24 the Division; and


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4. Taking such other and further action as the Division deems necessary and proper.

DATED: January 8, 2001


RONALD JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

EXHIBIT B



Louisiana State Board of Medical Examiners

630 Camp Street, New Orleans, LA 70130

Telephone: (504) 568-6820

Web site: www.lsbme.la.gov

Verification of Louisiana Medical License

Date of Report: December 2, 2016

Dear Sir/Madam:

This is to Certify that the records of the Louisiana State Board of Medical Examiners indicate the following information regarding:

Name:	ARNOLD FELDMANMD
Date of Birth:	[REDACTED]
Preferred Mailing Address:	17740 W Lakeway Ave. Baton Rouge, LA70810
Professional School Information:	Med College Of Pennsylvania
License Number:	MD.10296R
Date Issued:	March 3, 1994
Expiration Date:	10/20/2016
Status of License:	SUSPENDED
Disciplinary Actions:	<input type="checkbox"/> Yes but not attached <input checked="" type="checkbox"/> Yes see attached
Disciplinary Information:	

The Executive Director has legal custody of the official records of the Louisiana State Board of Medical Examiners and to the best of his knowledge; the aforesaid information is true and correct. He has designated the verification officer, whose signature appears below, to verify the records for the Board.

To expedite the verification process, the above is the standard format used by the Louisiana State Board of Medical Examiners.

A handwritten signature in black ink, appearing to read "Shelley Humphrey", is written over a horizontal line.

Shelley Humphrey, Investigations Assistant Manager

Telephone: (504) 568-6820 x 266

Fax: (504) 599-0503

shumphrey@lsbme.la.gov

**BEFORE THE
LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**

IN THE MATTER OF:

ARNOLD ERWIN FELDMAN, M.D.
(Certificate No. 10296R)

No. 14-A-004

Respondent

ORDER

On August 15, 2016, this Board issued its Decision and Order in this matter, which, *inter alia*, ordered that Arnold Feldman, M.D., be suspended from the practice of medicine for a period of two years. The suspension was to commence after thirty days, allowing time for patient referral to other providers. In light of the tragic flooding that has occurred in and around Baton Rouge, Louisiana, and the difficulty that may have caused Dr. Feldman in contacting all of his patients to inform them of his suspension and to provide them with referrals to other providers, the Board shall hereby further extend the effective date of the commencement Dr. Feldman's suspension, which shall now take effect on October 14, 2016.

IT IS HEREBY ORDERED that the two-year suspension period of Arnold E. Feldman, M.D. (Certificate No. 10296R) shall commence on October 14, 2016.

New Orleans, Louisiana, this 13 day of September, 2016.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

BY: Kenneth Barton Farris, M.D.
Kenneth Barton Farris, M.D.
Vice-President

CERTIFIED TRUE COPY
Shelly Hylton
Docket Clerk
Louisiana State Board of Medical Examiners
Date 12/02/2016

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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Writer's Direct Dial:

(504) _____

BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

**NUMBER: 14-A-004
IN THE MATTER OF:**

**ARNOLD ERWIN FELDMAN, M.D.
(Certificate No. 10296R)**

**ADMINISTRATIVE HEARING
HELD APRIL 11-13, 2016**

DECISION AND ORDER

This matter came before the Board pursuant to an Administrative Complaint, which charges Respondent, Arnold Erwin Feldman, M.D., with seven (7) violations of the Louisiana Medical Practice Act. The case was heard before a panel of the Board consisting of Dr. Kweli J. Amusa, Dr. Joseph Dewey Busby, Jr., Dr. Roderick Vince Clark, and Dr. Kenneth Barton Farris, the Presiding Vice-President. The Respondent was present and represented by Counsel. The Board will address each of the seven (7) violations.

In the Administrative Complaint, Dr. Feldman is charged with the following violations.

1. La. Rev. Stat. § 37:1285A(13) ("Unprofessional conduct") and Rev. Stat. § 37:1285A(4) ("Providing false testimony before the Board or providing false sworn information to the Board").

2. La. Rev. Stat. § 37:1285A(13) ("Unprofessional conduct") and La. Rev. Stat. §§37:1285(A)(14) ("Continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state").
3. La. Rev. Stat. §§37:1285(A)(14) ("Continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state").
4. La. Rev. Stat. § 37:1285A(13) ("Unprofessional conduct").
5. La. Rev. Stat. § 37:1285A(18) ("Knowingly performing any act, which, in any way, assists an unlicensed person to practice medicine or having a professional connection with or lending one's name to an illegal practitioner").
6. La. Rev. Stat § 37:1285A(6) ("Prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification thereof or in other than a legal or legitimate manner") and La. Rev. Stat. § 37:1285A(18) ("Knowingly performing any act, which, in any way, assists an unlicensed person to practice medicine or having a professional connection with or lending one's name to an illegal practitioner").
7. La. Rev. Stat § 37:1285A(11) ("Making or submitting false, deceptive, or unfounded claims, reports, or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value").

FINDINGS OF FACT

The Board considered the following:

The **first charge** asserts that Dr. Feldman violated La. R.S. 37:1285(A)(13) ("Unprofessional conduct") and La. R.S. 37:1285(A)(4) ("Providing false testimony before the Board or providing false sworn information to the Board") relative to his submission to the Board of medical records that had been falsified to reflect nursing care performed by a registered nurse on a patient who died under his care.

The Complainant supported this charge primarily through the testimony and evidence provided by Nurse Melinda Ballard. The Board found Ms. Ballard's testimony to be very credible and weighed it accordingly. Her testimony demonstrated that the extent of the falsifications in RR's record quite staggering. The following examples are illustrative of these falsifications:

- The Preoperative Checklist was signed by Ms. Ballard as the "Pre-Op Nurse," although Ms. Ballard testified she was not present for the preoperative exam.
- The Preoperative Checklist was signed by Ms. Ballard as the "OR Nurse," although Ms. Ballard testified she was not there during the operation.
- The Preoperative Checklist was signed by Ms. Ballard indicating the different medicines administered (500mg Cipro, 10mg Valium, and 100mg Demerol). Ms. Ballard, however, testified she did not administer those medications.
- Ms. Ballard made five marks on the Procedure Record even though she was not present for the procedure. The record was also signed by Dr. Feldman – it listed Ms. Ballard as circulator, which was false.
- Ms. Ballard signed the IVP Med Sheet even though she was not in the room when Versed was administered. Moreover, she was not present for the taking of vital signs even though she signed the document.
- The Nurses Notes were signed by Ms. Ballard even though she was not the nurse during the procedure.
- Ms. Ballard signed the Physician Orders, even though she did not perform the preoperative procedure on RR, and was not there to receive any physician orders before the patient went to surgery.
- The Admission Form shows Ms. Ballard as a "witness" to RR's signature, even though she did not admit RR or witness his signature.
- The Procedure Consent Form shows Ms. Ballard as a "witness" to RR's signature, even though she did not witness RR sign the document. As with

all the records, Dr. Feldman signed the Procedure Consent Form, despite its false representations, *after* Ms. Ballard did.

- The Material Risks form shows Ms. Ballard as a "witness" to RR's signature even though she never witnessed RR signing it.
- Ms. Ballard signed the Acknowledgement Authorization and Consent form as a "witness" to RR's signature even though she did not witness him signing the document.
- The Surgical Safety Checklist shows Ms. Ballard with the designations "In OR" and "per AEF," even though she was not in the ASC operating room for the patient confirmation, and never received any orders from Dr. Feldman.
- And finally, Ms. Ballard signed a Nursing Care Plan as the "Nurse" even though she was not the nurse during the procedure.

In sum, Ms. Ballard was asked and encouraged to sign the RR records eleven times in a false manner.

Addressing Nurse Ballard's testimony, the Respondent argued that Dr. Feldman never told Ms. Ballard to falsify anything and there is nothing to indicate he knew of her falsehoods. However, the evidence suggests that Dr. Feldman knew that RR's records were falsified for multiple reasons. In addition to the patently false entries of Ms. Ballard, Dr. Feldman signed RR's medical records no less than seven times. Dr. Feldman certainly knew that Ms. Ballard was not present during RR's procedure, because, among other reasons, Ms. Hart, a scrub tech testified that she told him she was running late. Even apart from Ms. Hart's testimony, Dr. Feldman admitted that Ms. Ballard was not present for RR's procedure until the stretchers were called. Despite this knowledge, Dr. Feldman signed RR's medical records where the records indicate Ms. Ballard as the "Pre-Op Nurse," "OR Nurse," and "Circulator." Each of these representations were false, but

Dr. Feldman executed the documents anyway. In fact, at least three times, he signed documents that were previously signed by Ms. Ballard. For each of these documents – the Physician Orders, the Procedure Consent Form, and the Acknowledgement/Consent – Ms. Ballard conceded that she signed all the documents before Dr. Feldman did.

Dr. Feldman can make no credible argument that he merely signed the documents but did not review them.

Further, Dr. Feldman himself made entries that were false. Of most importance, he signed the Anesthesia Preoperative Evaluation form, even though he did not perform the evaluation. On that same form, he signed acknowledging that he had explained to RR the anesthesia risks. Dr. Feldman did not see RR and advise him of anesthesia risks. Dr. Mellick, Dr. Feldman's own expert, said it would be "concerning" if Dr. Feldman did not see RR preoperatively to do a history and physical, or did not perform a cardiac respiratory exam before the procedure.

For the foregoing reasons, the Board finds Dr. Feldman guilty of violating La. R.S. 37:1285(A)(13) ("Unprofessional conduct") and La. R.S. 37:1285(A)(4) ("Providing false testimony before the Board or providing false sworn information to the Board").

Charge two maintains that Dr. Feldman violated La. R.S. 37:1285(A)(13) ("Unprofessional conduct") and La. R.S. 37:1285(A)(14) ("Continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state") relative to his failure to assure that licensed and registered nurses are available to assist and monitor patients undergoing surgical procedures in his facility. The allegations continued that Dr. Feldman also delegated nursing care, patient

assessment and monitoring, and the administration of intravenous medication to unlicensed personnel.

Similarly, **charge three** contends that Dr. Feldman violated La. R.S. 37:1285(A)(14) ("Continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state") relative to his performing a surgical procedure on a patient in his ASC who was a poor candidate for the procedure, and without a registered nurse or another appropriately trained, qualified, and licensed individual in the facility to monitor the patient while under conscious sedation. The allegations continued that Dr. Feldman failed to adequately monitor the patient, exercised poor management or care of the patient after complications arose, and all of his resuscitation attempts were contributing factors to the patient's death.

Since Charges 2 and 3 are closely related, these charges are reviewed together.

The evidence submitted to support these charges fell into three categories: (1) a history of citations lodged against Dr. Feldman by the DHH; (2) falsification of records; and (3) Dr. Feldman's treatment of RR fell below the standard of care for the LESI procedure.

History of Citations by DHH

The evidence showed that in 2010, the DHH visited Dr. Feldman's facility and placed it in "immediate jeopardy." The Public Health section of the Code of Federal Regulations defines "immediate jeopardy" as a "situation in which the provider's or supplier's non-compliance with one or more Medicare requirements, conditions of practitioners, conditions for coverage, or certificate has caused, or is likely to cause,

serious injury, harm, impairment, or death to a resident or patient.” The reasons given for the “immediate jeopardy” citation in 2010 were as follows:

- failure to ensure a registered nurse was on-site;
- scrub tech sat at the head of the bed monitoring the patient;
- no nurse in the recovery room when there were patients in the ASC;
- the administration of medication was delegated to unlicensed personnel;
- no documentation of the staff member who administered the medications;
- a scrub nurse had been assigned to administer medicine in the preoperative area;
- Dr. Feldman acknowledged that he was not continuously at the bedside of patients when they were in the pre-anesthesia care unit when medications were administered.

Further, DHH returned to Dr. Feldman’s facility in May 2011 and discovered that many of the same problems persisted.

Still further, DHH investigated Dr. Feldman’s facility after RR’s death (in February 2013). Once again, he was cited by DHH because:

- there was no documented evidence that he assessed the patient for anesthesia risk prior to RR’s procedure;
- there was no documentation demonstrating that RR was cleared to have his procedure and cleared to receive anesthesia in an ambulatory setting;
- he failed to properly credential another surgeon, Dr. Ronald Sylvest.

Falsification of Records

The Board believes it thoroughly discussed this issue in its analysis of charge one, and will not repeat itself.

Dr. Feldman's treatment of RR fell below the standard of care for the LESI procedure

The Complainant alleged that RR was not a good candidate for a procedure under conscious sedation at an ambulatory surgery center. Complainant stated that the procedure was risky because of the patient's numerous co-morbidities, including morbid obesity, obstructive sleep apnea, chronic obstructive pulmonary disease, hypertension, hypercholesteremia, and heart disease characterized as a "weak heart".

Of course, Respondent claims that RR was an acceptable candidate for the LESI procedure and provided expert testimony to support this position. The Board finds that whether RR was a good candidate to undergo the LESI procedure at an ambulatory surgical center is a reasonably debatable issue. What is beyond debate, however, is that RR received substandard care when he was brought into the preoperative room. First, he was not given a Preoperative Anesthesia Evaluation by a physician. Instead, that evaluation form was filled out by an unlicensed, unsupervised medical assistant, Haley Barker. Additionally, RR was not attended by a preoperative nurse, but instead, was examined by Ms. Barker.

No nurse was on the premises, let alone in the room, for RR's preoperative care. Ms. Barker testified that she brought RR back to the preoperative room from the waiting room because the nurse, Melinda Ballard, was running late. Further evidence of Dr. Feldman's treatment falling below the standard of care is RR's medication injections.

RR's preoperative medicines, including an injection of Demerol, a Schedule II narcotic, were administered by Ms. Barker, an unlicensed, unsupervised medical assistant. Also, an unlicensed scrub tech, Dana Bramlett, placed a 22-gauge peripheral

intravenous line in RR's left hand. That IV was problematic. During RR's code, IV access was lost and was never reestablished.

After RR was taken in to the operating room, there was no nurse physically present on the premises, let alone supervising the surgical suite, during RR's procedure. Moreover, RR was specifically designated for MAC (i.e., monitored anesthesia care) for the procedure, but the evidence revealed he was not monitored by any licensed personnel, such as a registered nurse or a nurse anesthetist. Still further, the sedative RR received (allegedly 4mg of Versed) was administered to RR by the unlicensed scrub tech before Dr. Feldman entered the operating room. Finally, the monitoring of RR during the procedure by the unlicensed scrub tech failed to detect any early signs of distress, and unfortunately, RR had a cardiac arrest.

Taking all of the aforementioned into account, this Board finds that Dr. Feldman is guilty of charges 2 and 3.

The fourth charge lodged against Dr. Feldman avers that he violated La. R.S. 37:1285(A)(13) ("Unprofessional conduct") relative to the allegation that he allowed an orthopedic surgeon, whose license was on probation pursuant to a Consent Order that required pre-approval of his practice, to perform surgical procedures at his ASC. Of the seven charges brought against Dr. Feldman, the Board finds this one to be almost self-proving. It was undisputed that Dr. Sylvest was placed on indefinite probation in 2011 for substance abuse. He was under a Consent Order. As part of the Order, the Board limited his practice as follows: **"Restriction to Board Approval Practice.** Dr. Sylvest shall only engage in the practice of medicine in a medical setting preapproved in writing

by the Board.” The Board also demanded that it “be apprised of his plans for performing any surgical procedures and any privileges be obtained in outpatient surgery centers.” In spite of the clear restrictions of this Consent Order, Dr. Feldman allowed Dr. Sylvest to perform twenty-seven (27) surgeries at his facilities before Dr. Sylvest was credentialed at all by the ASC. Dr. Feldman did credential Dr. Sylvest in March 2013, however, he knew that Dr. Sylvest could not obtain staff privileges at any hospital. When Dr. Feldman credentialed Dr. Sylvest, he also knew that Dr. Sylvest was under a Consent Order with the Board. In 2013, the Board discovered Dr. Sylvest’s actions, and again, suspended him.

Thus, Dr. Feldman allowed Dr. Sylvest to perform twenty-seven (27) surgeries at the clinic without being credentialed, and while Dr. Sylvest had not received clearance from the Board pursuant to the 2013 Sylvest Consent Order.

Respondent vehemently argued that Dr. Sylvest, and not Dr. Feldman, was the one who needed to apprise the Board and seek approval to engage in the practice of medicine at Dr. Feldman’s facilities. This argument is without merit because it misses the point.

The charge against Dr. Feldman is not that he was the one obligated to request and seek from the Board any approval for Dr. Sylvest to perform surgeries at his facilities. It is immaterial who apprised and requested approval from the Board. Rather, the charge focused on the fact that Dr. Feldman, as the medical director and the chief credentialing doctor at his facilities, was obligated to assure that those doctors who operated at his facilities – with his approval – were, in fact, licensed and authorized to practice medicine at his facilities.

Therefore, the Board finds that Dr. Feldman violated La. R.S. 37:1285(A)(13) ("Unprofessional conduct") and is guilty of charge four.

Turning our attention to **charge five**, we note that the Complainant declared that Dr. Feldman violated La. R.S. 37:1285(A)(18) ("Knowingly performing an act, which, in any way, assists an unlicensed person to practice medicine or having a professional connection with or lending one's name to an illegal practitioner") relative to the allegation that he knew or should have known that a staff member under his authority was engaging in the unauthorized practice of medicine.

The evidence adduced at the hearing supports the position that Dr. Feldman facilitated the unauthorized practice of medicine with his unlicensed staff. The following facts were demonstrated at the hearing:

- Dana Bramlett, an unlicensed scrub tech, refilled pain pumps.
- Pain pumps were filled by Ms. Bramlett even when Dr. Feldman was *not* on the premises.
- Ms. Bramlett was seen changing the dosages of pain pumps without consulting Dr. Feldman.
- Unlicensed personnel administered controlled medications at Dr. Feldman's facilities.
 - Ms. Bramlett administered the medications in the operating room for RR's procedure.
 - Haley Barker, a medical assistant, administered Demerol, a Schedule II controlled substance, to patients.
 - Ms. Bramlett administered Versed outside the presence of Dr. Feldman.

- Ms. Barker, a medical assistant, could not administer medications or help in the operating room. Despite these limitations, she did both. She injected Demerol and she helped in the operating room.

The Board finds that the evidence relating to the fifth charge is overwhelming, and therefore, finds Dr. Feldman guilty of this charge.

The **sixth charge** against Dr. Feldman states that he violated La. R.S. 37:1285(A)(6) ("Prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification thereof or in other than a legal or legitimate manner"), and La. R.S. 37:1285(A)(18) ("Knowingly performing an act, which, in any way, assists an unlicensed person to practice medicine or having a professional connection with or lending one's name to an illegal practitioner") relative to the allegation that he provided pre-signed prescriptions to his staff and/or allowed staff to utilize a "Ghost Writer" to affix his signature to prescriptions.

In addition to pre-printed, pre-signed prescriptions provided to patients without seeing him, Dr. Feldman also facilitated the unauthorized practice of medicine by allowing unauthorized personnel to "sign" prescriptions. Prescriptions were signed by unlicensed personnel using a ghostwriter, a device which would simulate his signature. Haley Barker testified that she signed prescriptions with the ghostwriter for a variety of medications like Percocet or OxyContin. Furthermore, based on the testimony of witnesses, we find that prescriptions were also signed by unlicensed personnel by hand.

In addition to allowing unlicensed personnel to dispense pre-signed prescriptions and to sign prescriptions by a ghostwriter or by hand, Dr. Feldman also allowed

unlicensed personnel access to controlled substances through a Pyxis machine. Dr. Feldman conceded he gave Dana Bramlett, a scrub tech, and Ms. Barker, a medical assistant, access to his Pyxis machine and its controlled substances. And, Ms. Barker confirmed that she had access to the machine.

The final charge the Board had to deliberate upon was **charge seven**, which states that Dr. Feldman violated La. R.S. 37:1285(A)(11) ("Making or submitting false, deceptive, or unfounded claims, reports, or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value") relative to the allegation that he submitted bills to insurance companies and/or governmental agencies for services that he did not personally perform.

Dr. Feldman avoided testimony about improper billing practices by invoking his Fifth Amendment privilege against self-incrimination. Because he invoked the constitutional right provided to him by the Fifth Amendment of the United States Constitution, the Board believed that he was constrained to fully defend himself against charge 7. Although the Complainant provided evidence to support this charge, it was challenging to rule on this issue after receiving only one side of what allegedly transpired with regard to Dr. Feldman's billing practices. Consequently, the Board decided to dismiss this specific charge without prejudice.

CONCLUSIONS OF LAW

In conclusion, in light of the foregoing discussion, and based on the law, evidence and findings of this Board, the Board holds that Dr. Feldman is guilty of Charges 1 through 6, and the Board dismisses, without prejudice, Charge 7.

SANCTIONS

Based upon the Findings of Fact and Conclusions of Law:

IT IS ORDERED that the license of Arnold Feldman, MD is hereby **SUSPENDED** from the practice of medicine for a **period of two (2) years**; the suspension period begins thirty (30) days after the date of this ruling, allowing time for patient referral to other providers.

IT IS FURTHER ORDERED that in the event First Choice Surgery Center of Baton Rouge continues to operate, the Board is to be notified of the physician serving as the Director and the Board is to be notified of any physician practicing medicine within the facility. This notification shall occur at least ten (10) business days prior to said physicians operating and/or practicing within the facility.

IT IS FURTHER ORDERED that Dr. Feldman shall pay a **fine of \$5000** and all costs associated with these proceedings beginning on the date of the filing of the Administrative Complaint.

IT IS FURTHER ORDERED that Dr. Feldman shall take one or more courses, which have been pre-approved by the Board, in the area of medical ethics, professionalism and medical recordkeeping.

IT IS FURTHER ORDERED that within 60 days prior to a request for reinstatement, Dr. Feldman shall undergo a mental/physical evaluation at a facility that has been pre-approved by the Board, and be deemed to be competent to practice medicine.

IT IS FURTHER ORDERED upon conclusion of the period of suspension, Dr. Feldman shall make a Personal Appearance before the Board during regularly scheduled meeting to demonstrate his compliance with the Board Order and to request reinstatement of his license.

IT IS FURTHER ORDERED that upon satisfaction of the proceeding terms, Dr. Feldman's license to practice medicine in the state of Louisiana shall be **Reinstated on Probation** for a period of three years (3) subject to his strict compliance with the following terms and conditions.

- (1) **Board Approval of Medical Practice.** Following the effective date of the Reinstatement Order and for the duration of the probationary period, Dr. Feldman shall provide the Board with information including a complete and accurate description, and such further information as the Board may request, concerning any practice setting in which Dr. Feldman intends to practice medicine. Dr. Feldman shall not engage in the practice of medicine in any practice setting in advance of the Board's specific written approval of such practice setting.
- (2) **Practice Monitoring and Quarterly Reports.** Within sixty (60) days of the effective date of the Reinstatement Order, Dr. Feldman shall enter into a contract with a Board-approved practice monitor program to monitor and review Dr. Feldman's medical practice during the probationary period. The program will work in conjunction with the

Board to develop parameters for monitoring Dr. Feldman's practice, including a review of Dr. Feldman's patient records and charts. The practice monitor shall review no less than thirty (30) records a quarter. The practice monitoring program will provide quarterly reports to the Board that will include an opinion as to whether Dr. Feldman is practicing medicine and documenting his patient's evaluation and treatment in accordance with the prevailing standards of medical practice. Dr. Feldman shall bear all costs associated with the practice monitor program.

(3) **Prescription, Dispensation, Administration of Controlled Substances Prohibited.** During the probationary period, except as authorized herein, Dr. Feldman shall not prescribe, dispense or administer any substance which may be classified, defined, enumerated or included in 21 C.F.R. §§1308.11-.15 or La. Rev. Stat §40:964, as a Schedule II, III or IV controlled substances. Dr. Feldman will be able to continue to prescribe Schedule V controlled substances in the course of his practice. This prohibition shall not prevent him from ordering the administration of controlled substances and other prescription medications to in-patients of and at a hospital or similar institution where he may be employed or exercise staff and clinical privileges in accordance with such hospital or institution's prescribed policies and procedures governing the administration of controlled substances.

(4) **Prohibitions on the Prescribing of Controlled Substances for the Treatment of Chronic Pain or Obesity.** At no time following the effective date of the Reinstatement Order shall Dr. Feldman prescribe controlled substances for the treatment of non-cancer related chronic pain or obesity. Furthermore, he shall not receive any remuneration from, have any ownership interest in or association with any clinic or practice setting or arrangement that advertises or holds itself out to the public as a clinic or practice for the care and/or treatment of patients for the management of chronic pain or obesity. Until and unless otherwise modified by the Board, in its

sole discretion, the restrictions contained in this provision shall survive the probationary period and remain in effect so long as Dr. Feldman shall hold any form of license or permit to practice medicine in the state of Louisiana.

- (5) **Collaboration with Nurse Practitioners, Supervision of Physician Assistants/Effect On.** During the probationary period, Dr. Feldman is not eligible to enter into or continue in a collaborative or supervisory practice agreement with a mid-level provider, *e.g.*, nurse practitioner or physician assistant. This restriction shall not preclude Dr. Feldman from employing nurses or other medical personnel to assist in his practice, as long as he is present and directing their activities appropriate to their level of expertise and ability.
- (6) **Continuing Medical Education.** Dr. Feldman shall obtain not less than fifty (50) credit hours per year for each of the three (3) years of his probationary period through attendance at and participation in continuing medical education ("CME") programs accredited by the American Medical Association. On or before the anniversary date of the effective date of this Order, for each of the three (3) years, Dr. Feldman shall cause to be submitted to the Board written certification of the CME programs and credits completed by him during the preceding twelve (12) months.
- (7) **Absence from the State/Practice/Effect on Probation.** Should Dr. Feldman at any time during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a physician, for a period of thirty (30) days or more, he will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which he was not engaged in practice or was absent from the state of Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed at the Board's discretion.

- (8) **Notification.** Dr. Feldman shall provide a complete copy of this Order to each hospital, clinic, facility or other employer or prospective employer at which or for whom he provides services as a physician in this state.
- (9) **Cooperation with Board's Probation and Compliance Officer.** Dr. Feldman shall immediately notify the Board's Probation and Compliance Officer of any change in his current home and professional addresses and telephone numbers and he shall direct all matters required pursuant to this Order to the attention of the Probation and Compliance Officer, with whom he shall cooperate on all matters and inquiries pertaining to his compliance with the terms and conditions of this Order.
- (10) **Probation Monitoring Fee.** For each year of the probationary period Dr. Feldman shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of the Reinstatement Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.
- (11) **Certification of Compliance with Probationary Terms/Personal Appearance.** At least sixty (60) days prior to the conclusion of the probationary period imposed herein, Dr. Feldman shall provide the Board with an affidavit certifying that he has complied with each of the terms of probation imposed by this Order and he shall contact the Board and arrange for a personal appearance before the Board at its meeting preceding the expiration of his probationary period. The probationary period and all of its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending Dr. Feldman's compliance with the requirements of this provision.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the terms and conditions set forth by this Order by Dr.

Feldman shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the revocation and cancellation of Dr. Feldman's license to practice medicine in the State of Louisiana or for such other action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. § 37:1285.

IT IS FURTHER ORDERED that this Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 15th day of August, 2016.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

BY: *Kenneth Barton Farris, M.D.*
Kenneth Barton Farris, M.D.
Vice-President

CERTIFIED TRUE COPY
Shelly H. Hylton
Docket Clerk
Louisiana State Board of Medical Examiners
Date *12/02/2016*